SALES AND USE TAX REVIEW COMMISSION RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER:
A-3843

DATE OF INTRODUCTION:
November 8, 2001

SPONSOR:
Assemblyman Azzolina
Assemblyman Malone

DATE OF RECOMMENDATION:
December 18, 2001

IDENTICAL BILL:
S-2560

COMMITTEE:
Assembly Commerce, Tourism, Gaming & Military and Veterans' Affairs Committee

DESCRIPTION:
The Bill authorizes the creation of a new UEZ in Beverly City, Burlington County.

ANALYSIS:
This Bill is proposed as an amendment to the New Jersey Urban Enterprise Zone Act of 1983 codified as N.J.S.A 52:27H-60 et seq. The purpose of the Act was to help revitalize the state's economically distressed urban areas. The Act provides a framework encouraging private capital investment and job creation in the selected urban areas. There were originally 10 designated zones. Currently, 27 zones exist.

Since the inception of the Act, its Constitutional validity has been brought into question. Under the Commerce Clause, a State may not impose taxes on out of state sale transactions that exceed the taxes imposed on in-state transactions. The UEZ program halves the 6% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 6% compensating use tax on goods purchased outside of New Jersey but brought into the state for use here. Thus, the law appears to discriminate between a "sale" and a "use" based upon where the transaction occurs.

As a result, non-UEZ New Jersey retailers are forced to compete with out of state retailers that deliver goods into a designated zone, as well as with the in-state UEZ vendors. To comply with the Commerce Clause, the Division must take the position that a New Jersey purchaser would be able to claim a 3% use tax rate if delivery is taken within the zone. The de facto extension of the 3% rate to retailers outside of New Jersey was never contemplated, but is nonetheless a real consequence of this program. Any expansion or creation of new 3% zones only makes this situation worse.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the UEZ Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions within the Zones. This disparate treatment of certain transactions violates this doctrine. Enactment of this Bill would exacerbate the already tenuous foundation upon which the Act is based.

As the number of Zones increase, the challenge of enforcement expands. Due to the high number of Zones in existence, New Jersey no longer enjoys the administrative simplicity it once did with sales tax uniformity across the State.

The Bill Statement attached to this proposed legislation states that “Beverly City has an aging infrastructure and needs the economic stimulus which an urban enterprise zone would provide”. No evidence was provided to the Commission that UEZ designation would provide the intended effect or that Beverly City would be an appropriate designee based on financial need.

RECOMMENDATION:
The Commission does not recommend enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 7

COMMISSION MEMBERS ABSTAINING: 0